

House of Representatives, April 1, 1998. The Committee on Environment reported through REP. STRATTON, 17th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE REPORTING OF CERTAIN SIGNIFICANT ENVIRONMENTAL HAZARDS BY OWNERS OF CONTAMINATED PROPERTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (a) For the purposes of this
2 section:

3 (1) "Commissioner" means the Commissioner of
4 Environmental Protection or his designee;

5 (2) "Parcel" means a piece, tract or lot of
6 land, together with buildings and other
7 improvements situated thereon, a legal description
8 of which piece, parcel, tract or lot is contained
9 in a deed or other instrument of conveyance;

10 (3) "Person" means person as defined in
11 section 22a-2 of the general statutes;

12 (4) "Pollution" means pollution as defined in
13 section 22a-423 of the general statutes;

14 (5) "Release" means any discharge,
15 uncontrolled loss, seepage, filtration, leakage,
16 injection, escape, dumping, pumping, pouring,
17 emitting, emptying, or disposal of oil or
18 petroleum or chemical liquids or solids, liquid or
19 gaseous products or hazardous wastes;

20 (6) "Residential activity" means any activity
21 related to a (A) residence or dwelling, including,
22 but not limited to, a house, apartment, or
23 condominium, or (B) school, hospital, day care
24 center, playground, or outdoor recreational area;

25 (7) "Substance" means an element, compound or
26 material which, when added to air, water, soil or
27 sediment, may alter the physical, chemical,
28 biological or other characteristics of such air,
29 water, soil or sediment;

30 (8) "Upgradient direction" means in the
31 direction of an increase in hydraulic head; and

32 (9) "Technical environmental professional"
33 means an individual, including, but not limited
34 to, an environmental professional licensed
35 pursuant to section 22a-133v of the general
36 statutes, who engages in the practice of
37 investigating and remediating sources of pollution
38 to soil or waters of the state and who may be
39 directly employed by, or retained as a consultant
40 by, a public or private employer.

41 (b) (1) If, in the course of investigating or
42 remediating pollution after the effective date of
43 this section which pollution is on or emanating
44 from a parcel, a technical environmental
45 professional determines that such pollution is
46 causing or has caused contamination of a public or
47 private drinking water well with a substance for
48 which the Commissioner of Environmental Protection
49 has established a ground water protection
50 criterion in regulations adopted pursuant to
51 section 22a-133k of the general statutes at a
52 concentration above the ground water protection
53 criterion for such substance, such professional
54 shall notify his client and the owner of the
55 parcel, if the owner can reasonably be identified,
56 not later than twenty-four hours after determining
57 that the contamination exists and shall notify the
58 commissioner if, seven days after such
59 determination, the owner of the subject parcel has
60 not notified the commissioner. If the owner
61 notifies the commissioner, the owner shall provide
62 documentation to the professional which verifies
63 that the owner has notified the commissioner.

64 (2) A person shall notify the commissioner if
65 such person has created, or is the owner of a
66 parcel on which exists, a source of contamination
67 to soil or waters of the state and becomes aware

68 that such pollution is causing or has caused
69 contamination of a private or public drinking
70 water well with a substance for which the
71 commissioner has established a ground water
72 protection criterion in regulations adopted
73 pursuant to section 22a-133k of the general
74 statutes at a concentration at or above the ground
75 water protection criterion for such substance.
76 Notice under this section shall be given to the
77 commissioner (A) orally not later than one
78 business day after such person becomes aware that
79 the contamination exists, and (B) in writing not
80 later than five days after such oral notice.

81 (c) (1) If, in the course of investigating or
82 remediating pollution after the effective date of
83 this section which pollution is on or emanating
84 from a parcel, a technical environmental
85 professional determines that such pollution is
86 causing or has caused contamination of a public or
87 private drinking water well with: (A) A substance
88 for which the commissioner has established a
89 ground water protection criterion in regulations
90 adopted pursuant to section 22a-133k of the
91 general statutes at a concentration less than such
92 ground water protection criterion for such
93 substance; or (B) any other substance resulting
94 from the release which is the subject of the
95 investigation or remediation, such professional
96 shall notify his client and the owner of the
97 parcel, if the owner can reasonably be identified,
98 not later than seven days after determining that
99 the contamination exists.

100 (2) A person shall notify the commissioner if
101 such person has created, or is the owner of a
102 parcel on which exists, a source of pollution to
103 soil or the waters of the state and such person
104 becomes aware that such pollution is causing or
105 has caused contamination of a private or public
106 drinking water well with: (A) A substance for
107 which the commissioner has established a ground
108 water protection criterion in regulations adopted
109 pursuant to section 22a-133k of the general
110 statutes at a concentration less than such ground
111 water protection criterion for such substance; or
112 (B) any other substance which was part of the
113 release which caused such pollution. Notice under
114 this subdivision shall be given in writing not

115 later than seven days after the time such person
116 becomes aware that the contamination exists.

117 (d) (1) If, in the course of investigating or
118 remediating pollution after the effective date of
119 this section which pollution is on or emanating
120 from a parcel, a technical environmental
121 consultant determines that such pollution of soil
122 within two feet of the ground surface contains a
123 substance, except for total petroleum hydrocarbon,
124 at a concentration at or above thirty times the
125 industrial/commercial direct exposure criterion
126 for such substance if the parcel is in industrial
127 or commercial use, or the residential direct
128 exposure criterion if the parcel is in residential
129 use, which criteria are specified in regulations
130 adopted pursuant to section 22a-133k of the
131 general statutes, such consultant shall notify his
132 client and the owner of the parcel, if such owner
133 is reasonably identified, not later than seven
134 days after determining that the contamination
135 exists, except that notice will not be required if
136 the land-use of such parcel is not residential
137 activity and the substance is one of the
138 following: Acetone, 2-butanone, chlorobenzene,
139 1,2-dichlorobenzene, 1,3-dichlorobenzene,
140 1,1-dichloroethane, cis-1,2-dichloroethylene,
141 trans-1,2-dichloroethylene, ethylbenzene,
142 methyl-tert-butyl-ether, methyl isobutyl ketone,
143 styrene, toluene, 1,1,1-trichloroethane, xylenes,
144 acenaphthylene, anthracene, butyl benzyl
145 phthalate, 2-chlorophenol, di-n-butyl phthalate,
146 di-n-octyl phthalate, 2,4-dichlorophenol,
147 fluoranthene, fluorene, naphthalene, phenanthrene,
148 phenol and pyrene.

149 (2) The owner of the subject parcel, shall
150 notify the commissioner in writing not later than
151 ninety days after the time such owner becomes
152 aware that the contamination exists except that
153 notification will not be required if not later
154 than ninety days: (A) The contaminated soil is
155 remediated in accordance with regulations adopted
156 pursuant to section 22a-133k of the general
157 statutes; (B) the contaminated soil is
158 inaccessible soil as that term is defined in
159 regulations adopted pursuant to section 22a-133k
160 of the general statutes; or (C) the contaminated
161 soil which exceeds thirty times such criterion is

162 treated or disposed of in accordance with all
163 applicable laws and regulations.

164 (e) (1) If, in the course of investigating or
165 remediating pollution after the effective date of
166 this section which pollution is on or emanating
167 from a parcel, a technical environmental
168 professional determines that such pollution is
169 causing or has caused ground water within fifteen
170 feet beneath an industrial or commercial building
171 to be contaminated with a volatile organic
172 substance at a concentration at or above thirty
173 times the industrial/commercial volatilization
174 criterion for ground water for such substance or,
175 if such contamination is beneath a residential
176 building, at a concentration at or above thirty
177 times the residential volatilization criterion,
178 which criteria are specified in regulations
179 adopted pursuant to section 22a-133k of the
180 general statutes, such professional shall, not
181 later than seven days after determining that the
182 contamination exists, notify his client and the
183 owner of the subject parcel, if such owner can
184 reasonably be identified.

185 (2) The owner of such parcel shall notify the
186 commissioner in writing not later than thirty days
187 after such person becomes aware that the
188 contamination exists except that notification is
189 not required if: (A) The concentration of such
190 substance in the soil vapor beneath such building
191 is at or below thirty times the soil vapor
192 volatilization criterion, appropriate for the
193 land-use for the parcel, for such substance as
194 specified in regulations adopted pursuant to
195 section 22a-133k of the general statutes; (B) the
196 concentration of such substance in groundwater is
197 below thirty times a site-specific volatilization
198 criterion for ground water for such substance
199 calculated in accordance with regulations adopted
200 pursuant to section 22a-133k of the general
201 statutes; (C) ground water volatilization
202 criterion, appropriate for the land-use of the
203 parcel, for such substance specified in
204 regulations adopted pursuant to section 22a-133k
205 of the general statutes is fifty thousand parts
206 per billion; or (D) not later than thirty days
207 after the time such person becomes aware that the
208 contamination exists, an indoor air monitoring

209 program is initiated in accordance with
210 subdivision (3) of this subsection.

211 (3) An indoor air quality monitoring program
212 for the purposes of this subsection shall consist
213 of sampling of indoor air once every two months
214 for a duration of not less than one year, sampling
215 of indoor air immediately overlying such
216 contaminated ground water, and analysis of air
217 samples for any volatile organic substance which
218 exceeded thirty times the volatilization criterion
219 as specified in or calculated in accordance with
220 regulations adopted pursuant to section 22a-133k
221 of the general statutes. The owner of the subject
222 parcel shall notify the commissioner if: (A) The
223 concentration in any indoor air sample exceeds
224 thirty times the target indoor air concentration,
225 appropriate for the land-use of the parcel, as
226 specified in regulations adopted pursuant to
227 section 22a-133k of the general statutes; or (B)
228 the indoor air monitoring program is not conducted
229 in accordance with this subdivision. Notice shall
230 be given to the commissioner in writing not later
231 than seven days after the time such person becomes
232 aware that such a condition exists.

233 (f) (1) If, in the course of investigating or
234 remediating pollution after the effective date of
235 this section which pollution is on or emanating
236 from a parcel, a technical environmental
237 professional determines that such pollution is
238 causing or has caused contamination of ground
239 water which is discharging to surface water and
240 such ground water is contaminated with a substance
241 for which an acute aquatic life criterion is
242 listed in appendix D of the most recent water
243 quality standards adopted by the commissioner at a
244 concentration which exceeds (A) ten times such
245 criterion for such substance in said appendix D,
246 or (B) an alternative surface-water protection
247 criterion calculated in accordance with
248 regulations adopted pursuant to section 22a-133k
249 of the general statutes, such professional shall
250 notify his client and the owner of such parcel, if
251 such owner can reasonably be identified, not later
252 than seven days after determining that the
253 contamination exists.

254 (2) The owner of such parcel shall notify the
255 commissioner in writing not later than seven days
256 after the time such person becomes aware that the

257 contamination exists except that notice shall not
258 be required if such person knows that the polluted
259 discharge at that concentration has been reported
260 to the commissioner in writing within the
261 preceding year.

262 (g) (1) If, in the course of investigating or
263 remediating pollution after the effective date of
264 this section which pollution is on or emanating
265 from a parcel, a technical environmental
266 professional determines that such pollution is
267 causing or has caused contamination of ground
268 water within five hundred feet in an upgradient
269 direction of a private or public drinking water
270 well which ground water is contaminated with a
271 substance resulting from a release for which the
272 commissioner has established a ground water
273 protection criterion in regulations adopted
274 pursuant to section 22a-133k of the general
275 statutes at a concentration at or above the ground
276 water protection criterion for such substance,
277 such technical environmental professional shall
278 notify his client and the owner of the subject
279 parcel, if such owner can reasonably be
280 identified, not later than seven days after
281 determining that the contamination exists.

282 (2) The owner of the subject parcel shall
283 notify the commissioner in writing not later than
284 seven days after the time such owner becomes aware
285 that the contamination exists.

286 (h) (1) If, in the course of investigating or
287 remediating pollution after the effective date of
288 this section which pollution is on or emanating
289 from a parcel, a technical environmental
290 professional determines that such pollution is
291 causing or has caused polluted vapors emanating
292 from polluted soil, groundwater or free product
293 which vapors are migrating into structures or
294 utility conduits and which vapors pose an
295 explosion hazard, such technical environmental
296 professional shall immediately notify his client
297 and the owner of the subject parcel, if such owner
298 can reasonably be identified, and the
299 commissioner, not later than twenty-four hours
300 after determining that the vapor condition exists
301 if the owner of such parcel fails to notify the
302 commissioner in accordance with this subsection.
303 If the owner notifies the commissioner, the owner
304 shall provide documentation to the professional

305 which verifies that the owner has notified the
306 commissioner.

307 (2) The owner of such parcel shall orally
308 notify the commissioner and the local fire
309 department not later than four hours after the
310 time a technical environmental professional
311 notifies the owner that the vapor condition
312 exists, and shall notify the commissioner in
313 writing not later than five days after such oral
314 notice.

315 (i) All notices, oral or written, provided
316 under this section shall include the nature of the
317 contamination or condition, the address of the
318 property where the contamination or condition is
319 located, the location of such contamination or
320 condition, any property known to be affected by
321 such contamination or condition, any steps being
322 taken to abate, remediate or monitor such
323 contamination or condition, and the name and
324 address of the person making such notification.
325 Written notification shall be clearly marked as
326 notification required by this act and shall be
327 either personally delivered to the Water
328 Management Bureau of the Department of
329 Environmental Protection or sent certified mail,
330 return receipt requested, to the Water Management
331 Bureau of the Department of Environmental
332 Protection.

333 (j) The commissioner shall provide written
334 acknowledgment of receipt of a written notice
335 pursuant to this section not later than forty-five
336 days of receipt of such notice. If a plan is
337 submitted which details actions to be taken, or a
338 report is submitted which details actions taken,
339 to mitigate the contamination or conditions such
340 that notice under this section would not be
341 required, and such plan or report is acceptable to
342 the commissioner, the commissioner shall approve
343 such plan or report in writing.

344 (k) Nothing in this section and no action
345 taken by any person pursuant to this section shall
346 affect the commissioner's authority under any
347 other statute or regulation.

348 (l) Nothing in this section shall excuse a
349 person from complying with the requirements of any
350 statute or regulation except the commissioner may
351 waive the requirements of the regulations adopted
352 under section 22a-133k of the general statutes if

353 he determines that it is necessary to ensure that
354 timely and appropriate action is taken to mitigate
355 or minimize any of the conditions described in
356 subsections (b) to (h), inclusive, of this
357 section.

358 Sec. 2. Section 22a-16a of the general
359 statutes is repealed and the following is
360 substituted in lieu thereof:

361 In any action brought by the Attorney General
362 under section 22a-16 or under any provision of
363 this title which provides for a civil or criminal
364 penalty for a violation of such provision, the
365 court, in lieu of any other penalties, damages or
366 costs awarded, or in addition to a reduced
367 penalty, damages or costs awarded, may order the
368 defendant (1) to provide for the restoration of
369 any natural resource or the INVESTIGATION,
370 remediation or mitigation of any environmental
371 pollution on or at any real property which
372 resource or property are unrelated to such action,
373 (2) to provide for any other project approved by
374 the Commissioner of Environmental Protection for
375 the enhancement of environmental protection or
376 conservation of natural resources, (3) to make a
377 financial contribution to an academic or
378 government-funded research project related to
379 environmental protection or conservation of
380 natural resources, or (4) to make a financial
381 contribution to the Special Contaminated Property
382 Remediation and Insurance Fund established under
383 section 22a-133t provided the total aggregate
384 amount of all contributions to said fund under
385 this section shall not exceed one million dollars
386 per fiscal year. [provided no] NO defendant
387 carrying out any order under this section may
388 claim or represent that its expenses in so doing
389 constitute ordinary business expenses or
390 charitable contributions or any other type of
391 expense other than a penalty for a violation of
392 the environmental laws.

393 ENV COMMITTEE VOTE: YEA 22 NAY 1 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5712

STATE IMPACT	Potential Cost, see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Environmental Protection

EXPLANATION OF ESTIMATES:

STATE IMPACT: Passage of this bill could result in additional costs to the Department of Environmental Protection (DEP). The bill requires technical environmental professionals (TEP) and the owner of the property, to notify DEP of pollution from property being investigated or remediated in various circumstances. It is unknown at this time how many new notifications of pollution which is causing or has caused contamination DEP will receive, and will have to investigate and take action to ensure the pollution is eliminated. If one or two additional contamination problems arise a month, existing staff could be able to absorb the workload increase. However, if one or two or more notifications are received a week, there would be a need for an additional inspector, analyst and support staff estimated at \$100,000. The exact impact is not known at this time.

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OLR BILL ANALYSIS

sHB 5712

AN ACT CONCERNING THE REPORTING OF CERTAIN SIGNIFICANT ENVIRONMENTAL HAZARDS BY OWNERS OF CONTAMINATED PROPERTY AND SUPPLEMENTAL ENVIRONMENTAL PROJECTS

SUMMARY: This bill requires a technical environmental professional (TEP) to notify his client and a property's owner, if he can be identified, within a specified period after determining in the course of investigating or remediating water pollution that (1) pollution is on or emanating from the property and (2) the pollution is causing or has caused contamination of:

1. a public or private drinking water well,
2. ground water within 500 feet of a drinking water well,
3. soil within two feet of the surface,
4. ground water under a building,
5. ground water discharging to surface water, or
6. vapors in soil or water which pose an explosion threat.

The bill also requires the owner of the contaminated property to notify the Department of Environmental Protection (DEP) of the contamination once he becomes aware of it and in some circumstances requires the TEP to notify the department, if the owner does not. It specifies that neither these provisions nor any other action taken under these provisions affects the commissioner's authority under any other law.

The bill allows the DEP commissioner to waive the regulatory requirements for site clean up if he determines a waiver is necessary to ensure that timely and appropriate action is taken to mitigate or minimize any contamination for which notification is required under this bill.

The bill defines a TEP as anyone who investigates and

remediates pollution to the state's soil or water, including a licensed environmental professional, who may be directly employed by or retained as a consultant by a public or private employer.

By law, courts may impose alternative sanctions in any suit filed by the attorney general for violations of environmental laws involving civil or criminal penalties or declaratory or equitable relief. The bill expands the alternative sanctions available to the court to include ordering defendants to provide for the investigation of environmental pollution at sites unconnected to the suit.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

Drinking Water Wells

Lands Above Criteria. The bill requires a TEP to notify his client and the property owner within 24 hours of determining that pollution on or emanating from the property is causing or has caused contamination of a public or private drinking water well. The contamination must be from a substance for which the DEP has established ground water protection criteria by regulation and be above the criteria for that substance. He must also notify the DEP commissioner, by seven days after his determination, if the property owner has not done so. If the owner notifies the commissioner, he must inform the TEP.

The bill requires anyone who has created or who owns the property containing such a source of contamination and who becomes aware that the pollution is causing or has caused contamination of a public or private drinking water well to notify the commissioner both orally and in writing of this pollution. The oral notification must be given within one business day after he becomes aware of the contamination. The written one must be given within five days of the oral notice.

Lands Below Criteria. The bill also requires a TEP to notify his client and the property owner within seven days of determining that the contamination is from (1) a substance for which the DEP has established ground

water protection criteria by regulation and the concentration of the substance is below the criteria or (2) any other substance resulting from a release that is the subject of the investigation or remediation. The bill requires anyone who has created such contamination or who owns the property where it exists and who becomes aware of it to give written notice to the commissioner within seven days after the time he becomes aware of the contamination.

Within 500 Feet of a Well. The bill requires a TEP to notify his client and the property owner within seven days of determining that pollution on or emanating from a parcel is causing or has caused contamination of ground water with 500 feet in an upgradient direction of a public or private drinking water well. The contamination must result from a release of a substance for which the DEP has established ground water protection criteria by regulation and be at a concentration at or above the criteria for such substance. The property owner must notify the DEP commissioner within seven days after the time he becomes aware of the contamination.

Surface Contamination

The bill requires a TEP to notify his client and the property owner within seven days of determining that there is soil pollution with two feet of the parcel's surface. The pollution must be from a substance, except total petroleum hydrocarbons, for which the DEP has established by regulation industrial and commercial or residential direct exposure criteria and be at a concentration at or above 30 times the criteria. But notice is not required if the land is not used for residential activity and the substance is acetone or one of a number of other specified compounds.

The parcel's owner must notify the commissioner in writing within 90 days after he becomes aware of the contamination unless the soil is remediated, inaccessible, or treated or disposed.

Beneath a Building

The bill requires a TEP to notify his client and the property owner within seven days of determining that pollution on or emanating from the property is causing

or has caused contaminated ground water within 15 feet beneath a building. The pollution must be from a volatile organic substance, for which the DEP has established by regulation industrial and commercial or residential volatilization criteria for ground water for such substance and be at a concentration at or above 30 times the criteria.

The property owner must notify the commissioner in writing within 30 days after he becomes aware of the contamination unless (1) the concentration in the soil vapor beneath the building is at or below 30 times the soil vapor volatilization criteria for the land's use, (2) the concentration in the ground water is below 30 times a site-specific volatilization criteria for such substance, (3) ground water volatilization criteria for the land's use for the substance is fifty thousand parts per billion, or (4) with 30 days of becoming aware of the contamination an indoor air monitoring program begins.

The bill requires the indoor air-monitoring program it establishes to (1) sample the indoor air once every two months for at least a year, (2) sample indoor air immediately above the contaminated ground water, and (3) analyze air samples for any volatile organic substance which exceeds 30 times the criteria. The owner must notify the commissioner in writing within seven days of becoming aware that (1) the concentration in any indoor air sample exceeds 30 times the target concentration or (2) the indoor air monitoring program is not being conducted according to the bill's provisions.

Surface Water

The bill requires a TEP to notify his client and the property owner within seven days of determining that pollution on or emanating from the property is causing or has caused contamination of ground water which is discharging to surface water. The ground water must be contaminated with a substance for which DEP lists an acute aquatic life criteria at a concentration which exceeds (1) 10 times the listed criteria or (2) an alternative surface water protection criteria calculated using DEP regulations.

The property owner must notify the commissioner in

writing within seven days after he becomes aware of the contamination unless he knows that the pollution at the same concentration has been reported in writing within the preceding year.

Explosion Hazard

The bill requires a TEP to notify his client and the property owner immediately if he determines that pollution on or emanating from the property is causing or has caused polluted vapors from polluted soil, ground water, or free product (product not yet absorbed into the soil or water) and the vapors are migrating into structures or utility conduits and pose an explosion hazard.

The property owner must orally notify the commissioner and the local fire department within four hours after the professional notifies him and must notify the commissioner in writing within five days of the oral notice. The TEP must notify the commissioner within 24 hours if the property owner does not do so. If the owner notifies the commissioner he must inform the TEP.

Notice Requirement

The bill requires any oral or written notice to include:

1. the nature of the contamination;
2. the address of the contaminated property and the location of the contamination;
3. any property known to be affected by the contamination;
4. any steps being taken to abate, remediate, or monitor the contamination; and
5. the name and address of the person making the notice.

A written notice must be marked as notice required by this bill and be either personally delivered or sent certified mail, return receipt requested, to DEP's Water Management Bureau. The commissioner must acknowledge receipt of the written notice within 45

days. If a plan or report is submitted which details actions taken or to be taken concerning the contamination such that notice would not be required and he finds the plan or report acceptable, the commissioner must approve it in writing.

COMMITTEE ACTION

Environment Committee

Joint Favorable Substitute
Yea 22 Nay 1